



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Mr. Scott A. Kelly
Assistant General Counsel
The Texas A & M University System
College Station, Texas 77843-1230

OR93-384

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19497.

Texas A&M University (the university) received an open records request for

[r]ecords of the Corps of Cadets formal administrative hearing, which began on Jan. 28, 1993, investigating allegations from a female cadet that she was sexually harassed and sexually assaulted by a male cadet. Further, I request any final reports and recommendations that were a result of the hearing.

No information on the identity of the students is being requested such as name or student leadership positions.

You submitted to this office various records pertaining to the administrative hearing referred to in the request. You contend that these records are excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g.¹

¹You also refer us to sections 3(a)(14) and 14(e) of the Open Records Act. Section 14(e) incorporates the requirements of the FERPA into the Open Records Act and makes them prevail over other inconsistent provisions of the Open Records Act. Open Records Decision No. 431 (1985). Section 3(a)(14) excepts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue . . . V.T.C.S. art. 6252-17a § 3(a)(14). The phrase "student records" in section 3(a)(14) has generally been construed to be the equivalent of "education records." Thus, our resolution of FERPA in this instance also resolves the application of section 3(a)(14) to the requested information. See generally Attorney General Opinion H-447 (1974); Open Records Decision No. 539 (1990); 477 (1987); 332 (1982).

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases education records (or personally identifiable information contained therein other than directory information) of students without the written consent of the parents to anyone but certain enumerated federal, state, and local officials and institutions. *See* 20 U.S.C. § 1232g (a)(1)(A), (a)(2), (b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to inspect these records. 20 U.S.C. § 1232g(d). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A).

You assert that FERPA prohibits the release of all of the information you have submitted to this office. We disagree. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *Open Records Decision Nos. 332 (1982); 206 (1978).*²

After reviewing the records at issue, we conclude that the university must withhold all "personally identifiable information" such as the students' names, leadership positions, addresses, and social security numbers as well as the names of their parents. *See* 34 C.F.R. § 99.3. We have highlighted in yellow portions of the records submitted to this office that we conclude constitute "personally identifiable information" that must be withheld.³ We have highlighted in green other portions of those records which may make a student's identity easily traceable.⁴ If you determine that the portions marked in green or any other information contained in the records would tend to identify a particular student, you must resubmit that information to this office within ten days of the date of this letter along with your explanation as to why the information should be withheld. If you do not do so, we will presume you have determined that the release of that

²The requestor in this instance also has not requested "information on the identity of the students."

³We note here that the university has previously published a press release concerning the allegations of sexual assault and harassment which contained the phrases "sophomore female," "senior member," and "in the band." Given the use of these phrases in the press release, we assume the university has determined that the phrases do not constitute "personally identifiable information" about any student.

⁴Among the records submitted to this office is a university police incident report concerning university students. Although this office has held that such reports do not constitute "educational records" when held by campus police, *see* *Open Records Decision No. 612 (1992)*, the Family Policy and Regulations Office of the U.S. Department of Education has informed this office that campus police records maintained by the university administration are considered to be educational records and thus must be de-identified before they may be released.

information would not identify particular students and that you have released it. All remaining information in these records must be released to the requestor at this time.⁵ *See Kneeland v. National Collegiate Athletic Association*, 650 F.Supp. 1076, 1090 (W.D. Tex. 1986) (educational records are public where personally identifiable information is deleted), *rev'd on other grounds* 850 F.2d 224 (5th Cir. 1988).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/jmn

Ref.: ID# 19697
ID# 19703
ID# 19933
ID# 19951

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⁵The purpose and effect of deleting all personally identifiable information from these records is to insure that the privacy interests of the individuals involved are not compromised. Accordingly, this office need not address whether the remaining information is protected by common-law privacy. *See generally Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).